

confidentiality concerns, while still others thought that paper filing is not unduly burdensome. A few commenters said that electronic filing of non-confidential information should be allowed as a means of expediting the process. Neither MARAD nor the Department of Transportation has the current capacity to utilize electronic filing efficiently or to ensure the confidentiality of information submitted. The Department is currently working on resolving these issues as part of its centralized docket system. When such a system is in place, MARAD will consider offering electronic filing to applicants as an option.

### Shipyard Documentation

Five commenters stated that they believed MARAD should create special documents to govern closings on commitments to guarantee shipyard modernizations. Most commenters recognized that the differences between the land transactions involved in shipyard modernization projects and the maritime transactions involved in vessel guarantees merited different closing documentation. In addition, commenters requested that MARAD simplify the documentation. In response, MARAD has prepared a separate set of closing documents for shipyard modernizations. A decision was made not to include a land mortgage since these mortgages vary considerably under local law.

### U.S.-Flag and Export Closing Documents

Eight commenters informed us that the existing documents are redundant, inconsistent with current financing practices, unnecessarily voluminous and cumbersome, and difficult to understand. They said that the current documents deter use of the program instead of facilitating its use. They asked MARAD to streamline its documents to reduce unnecessary work and legal fees and other expenses and to make the documentation clearer.

The proposed closing documentation has been rewritten to address many of these concerns. The proposed documentation for the financing of vessels and shipyard modernizations has been simplified and rewritten in plainer English. The length of the vessel documents has been reduced by about 45% (for an uncomplicated transaction) to about 135 pages from about 250 pages. Naturally, the size of the documentation will vary depending on the need for intercreditor agreements, subordination agreements, corporate guarantees, and other complexities that

arise out of the individual considerations of any specific transaction. Most importantly, MARAD believes that the proposed revisions to the documents have been made without sacrificing any of the essential rights of the government, shipowners, shipyards or other parties.

In response to requests for documents to cover private placements of obligations without the use of an Indenture Trustee, the agency has developed an even more compact set of documents to cover guarantees of direct debt instead of the necessarily more complicated public bond offerings. These documents eliminate the need for a bond purchase agreement, a trust indenture, bonds, and an authorization agreement. They may be especially useful in attracting smaller applications, but they can be used in larger transactions as well. Depending on the size of the credit agreement and promissory note negotiated by the bank or other direct lender, the documentation needed in these nontrustee transactions could be reduced by about another 40 pages to about 95 pages in their entirety.

By offering the maritime industry and its underwriters and attorneys the opportunity to use these clearer, more streamlined and contemporary financial documents, MARAD will make the Title XI program more attractive to shipowners and shipyards without compromising the interests of the government. By reducing the burden and cost, MARAD will carry out its statutory mission more effectively. MARAD welcomes review of and comments on these documents.

By Order of the Maritime Administrator.

Dated: July 24, 1998.

**Joel C. Richard,**

*Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 49 CFR Part 392

[FHWA Docket No. FHWA-98-4202]

RIN 2125-AD75

#### Railroad Grade Crossing Safety

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The Hazardous Materials Transportation Authorization Act of

1994 requires the amendment of the Federal Motor Carrier Safety Regulations (FMCSRs) to prohibit operators of commercial motor vehicles (CMVs) from driving onto a railroad grade crossing unless there is sufficient space to drive completely through the crossing without stopping. The FHWA, therefore, proposes to make this amendment which is intended to reduce the incidence of collisions between trains and CMVs. Comments and information are requested about railroad grade crossings that lack sufficient clearance for some CMVs to be driven completely through the crossing before being required to stop by a stop sign, highway traffic signal, or similar traffic control device. The FHWA intends to have a public meeting in Washington, D.C. during the comment period to discuss this subject matter.

**DATES:** Data and information concerning railroad-highway crossings from State agencies must be received no later than September 28, 1998. Comments from motor carriers and other interested parties must be received no later than November 27, 1998.

**ADDRESSES:** All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to Docket Clerk, U.S. DOT Dockets, Room PL-401, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

**FOR FURTHER INFORMATION CONTACT:** Mr. David M. Lehrman, Office of Motor Carrier Research and Standards, (202) 366-0994, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and

suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the **Federal Register's** home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

### Background

The purpose of driving rules concerning railroad grade crossings is to prevent the disastrous consequences which result when trains collide with commercial motor vehicles. These consequences are particularly horrendous when the commercial motor vehicle is transporting passengers or hazardous materials. On August 26, 1994, the President signed the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103-311, 108 Stat. 1673)(the Act). Section 112 of the Act requires the Secretary of Transportation to amend the FMCSRs to prohibit the driver of any CMV from driving the motor vehicle onto a highway-railroad grade crossing without having sufficient space to drive completely through the crossing without stopping." In response to the Act, the FHWA proposes to amend § 392.12 of the FMCSRs to implement this statutory prohibition.

Some railroad grade crossings, however, lack sufficient clearance for some CMVs to drive completely through before stopping for a stop sign or other traffic control device. For example, a railroad grade crossing with 12.2 meters (40 feet) between the tracks and a stop sign could not accommodate a tractor-trailer combination which is 18.3 meters (60 feet) long. The FHWA requests that State agencies submit data on the number and locations of such railroad grade crossings within their respective States. In doing so, State agencies should identify the railroad grade crossings where CMVs with the longest legal length under applicable State law could not comply with the proposed rule. The FHWA especially wants to determine whether any such crossings are present on the National Network (NN) where the operation of CMV combinations with two 8.5-meter (28-foot) trailers, or even longer combinations, is permitted. Information about reasonable access routes used by these vehicles in traveling to or from the NN would also be useful. States that allow longer combination vehicles affected by the freeze imposed by the Intermodal Surface Transportation Efficiency Act of 1991 should make particular efforts to determine the effect of this proposed rule on those vehicles, which are prohibited from using routes

not in actual, lawful use under State law or regulation on or before June 1, 1991.

The rule, if promulgated, could impact the allowable routing of CMVs. Motor carriers and drivers would have to consider all railroad grade crossings which would be encountered during a trip. If the CMV driver could not use a railroad grade crossing without violating § 392.12, an alternative routing which avoids that crossing would have to be selected. The scenario would be similar where there is little clearance between a railroad grade crossing and a highway traffic signal. Upon approaching such a crossing, a CMV driver could stop short of the tracks and wait until the signal permitted the movement of traffic before attempting to drive through the crossing. Signal timing might have to be adjusted to allow enough time for the CMV to move completely through the crossing, given the time necessary to accelerate from a complete stop and/or the delay caused by the queue of other motor vehicles. The proposed rule would also prohibit the driving of a CMV onto a railroad grade crossing when stopped motor vehicle(s) prevent the driving of the CMV completely through the crossing without stopping. Similarly, changes in the location of traffic signs could alleviate the problems of insufficient clearance.

The FHWA believes that at least some motor carriers are aware of the approximate frequency with which their drivers encounter a railroad grade crossing with a nearby stop sign or other traffic control device that prevents driving completely through the crossing without stopping, or that they could obtain this information without substantial effort. The FHWA requests these motor carriers to assess the impact of the proposed rule upon their operations and advise the agency of this assessment. In addition, the FHWA will consider any recommendation to implement the statutory prohibition that would minimize the difficulties and burdens upon the operations of motor carriers while reducing the likelihood of collisions between trains and CMVs. Physical infrastructure improvements may provide an alternative in some situations. During the public input process to the Secretary's Task Force on Grade Crossing Safety and in deliberations of the Task Force's Technical Work Group, a number of infrastructure improvements were presented. The proposed improvements included physical relocation of the roadway or railroad, construction of escape or merge lanes, replacement of signs with traffic signals, adjusting signal timing, and interconnecting signals. State and local agencies are

requested to comment on the benefits, feasibility and impact of the infrastructure alternatives.

As explained more fully below, the Department of Transportation has worked with States to help improve safety at railroad-highway crossings. One recommendation of the Secretary's Grade Crossing Safety Task Force was that "State and local highway authorities should initiate engineering studies to determine if safety improvements are warranted at grade crossings near highway-highway intersections where there is no interconnection and where there is limited storage distance. Emphasis should be given to locations with STOP sign control at the highway-highway intersection, where storage space is less than required to accommodate the longest legal vehicle permitted to use the highway, and where accident potential is greater due to high volumes of highway and/or rail traffic." In response to this recommendation, States have begun to develop databases that, among other things, indicate where crossings with storage distance problems may exist.

The FHWA requests that State agencies submit data and information concerning railroad-highway crossings within their jurisdiction by September 28, 1998. The FHWA also intends, as part of this rulemaking, to contact its State partners to obtain the latest information available. The FHWA will place the information obtained from the States in the docket. Motor carriers and others interested in this rulemaking are asked to check the information placed in the docket and, by November 27, 1998, to advise the FHWA of the impact they believe the proposal contained in this NPRM will have on motor carrier operations and highway and rail safety generally.

The FHWA believes that as a result of the work done by States in this area over the past several years, much information is available regarding the number and location of railroad-highway crossings that present storage problems, especially for longer commercial motor vehicles. However, if such information is not available or is submitted late to the docket, or if the information reveals an unexpectedly large number of railroad-highway crossings presenting storage problems, the FHWA may extend the period for comment to this docket to enable interested parties to comment to the docket and to provide the FHWA with the information and time necessary to effectively and reasonably implement section 112.

FHWA and the Federal Railroad Administration request comments on

the advisability of making provision for retaining such information within the U.S. DOT/AAR National Highway-Rail Crossing Inventory thus allowing State DOTs the option of keeping such data current and accessible.

In order to fully understand the context in which this NPRM arose, it is necessary to review Department of Transportation efforts to address the issue of railroad grade crossing safety.

### **DOT Initiatives on Grade Crossing Safety**

Shortly after the collision of a commuter train with a school bus in Fox River Grove, Illinois which resulted in seven deaths on October 25, 1995, the Secretary of Transportation established the U.S. DOT Grade Crossing Safety Task Force to look into grade crossing safety. The Task Force was composed of representatives from four modal administrations within the Department: the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), and staff from the Office of Intermodalism. The Task Force was responsible for building upon the Department's 1994 Rail-Highway Crossing Safety Action Plan. The Task Force proceeded to rigorously review the decision making process for designing, constructing, maintaining, and operating railroad-highway grade crossings.

The Task Force solicited information from knowledgeable people in both public and private sectors who had expertise in areas relevant to the inquiry. The National Transportation Safety Board (NTSB), which investigated the Fox River Grove collision, also provided a resource person to assist the Task Force.

On March 1, 1996, the Task Force delivered a report to the Secretary entitled "Accidents That Shouldn't Happen." The report focused on 24 long-term and short-term recommendations broken down into the following problem areas:

- a. Interconnected Signals and Storage
- b. High Profile Crossings
- c. Light-Rail Crossing Issues
- d. Special Vehicle Operations and Information
- e. Available Storage Space for Motor Vehicles Between Highway-Rail Crossings and Adjacent Highway-Highway Intersections (Storage Space)

The report concluded that "improved highway-rail grade crossing safety depends upon better cooperation, communication, and education among

responsible parties if accidents and fatalities are to be reduced significantly." The Task Force proposed to reconvene one year later to evaluate progress in implementation of the recommendations. The report also made a long-term recommendation that the FHWA and the FRA convene a technical working group (TWG), to evaluate current standards and a variety of technical issues. A TWG was immediately formed consisting of government agencies, industry groups, highway and rail associations, safety advocacy groups, and law enforcement associations. The TWG proceeded to evaluate current standards and guidelines regarding a variety of grade crossing technical issues.

The TWG met three times during 1996-1997. It presented 35 recommendations to the Task Force, including the following suggestions for the FHWA on standards/guidelines for vehicle storage and other grade crossing safety issues: the identification of focal points to coordinate railroad safety issues in each State; the initiation of regional State/railroad conferences; and the creation of an advance warning sign for motorists approaching high-profile crossings.

Recommendations regarding the issue of interconnected signals and storage were implemented in guidance issued by FHWA Executive Director, Anthony R. Kane, to all field offices. Mr. Kane urged that FHWA field staff visit their State and local counterparts to ensure that the recommendations were implemented.

As a result, all States with operating railroads informally designated a central focal point for railroad crossing safety issues and provided the name of the contact to the FHWA and/or the FRA.

The Implementation Report of the U.S. DOT Grade Crossing Safety Task Force was submitted to Secretary Slater on June 1, 1997. It documents the close coordination achieved through the cooperative efforts of four operating administrations on the Grade Crossing Safety Task Force (FHWA, FRA, FTA, and NHTSA).

The Department has printed this report as a formal U.S. DOT publication. The FHWA, FRA, and Office of Intermodalism have distributed copies to U.S. DOT headquarters and field offices, State DOTs, State emergency service providers, rail safety organizations (e.g., Operation Lifesaver), and industry associations (e.g., Association of American Railroads).

The Department has distributed this report to all the groups and individuals that participated in the Technical Working Group. The Department urges

those agencies, organizations, and other professional societies to take steps to formally endorse this report and implement its recommendations.

The nexus between the actions cited above and the current rulemaking lies in the common goal of reducing the incidence of collisions between trains and commercial motor vehicles. The Department is committed to using the best available resources to targeting safety hazards at railroad crossings throughout the United States. For that reason, this rule proposes that operators of commercial motor vehicles be prohibited from driving onto a railroad grade crossing unless there is sufficient space to drive completely through the crossing without stopping.

### **Rulemaking Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

### **Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The FHWA has analyzed this proposed rule for the purposes of Executive Order 12866 and the Department of Transportation regulatory policies and procedures, and believes that it is a significant regulatory action because of the anticipated substantial public and congressional interest in this action.

The FHWA anticipates that the rule could have an economic impact because it could trigger infrastructure changes to right-of-way or traffic devices or require some motor carriers to develop alternative routing, or operate shorter CMVs to avoid railroad grade crossings where the placement of a stop sign or highway traffic signal would prevent a driver from being able to drive completely through the crossing without stopping. The last alternative would increase the number of CMVs and drivers needed to make the same deliveries because truckload shipments would be split among two or more CMVs. The FHWA will attempt to better

quantify the extent of the economic impact of this proposed rule on the motor carrier industry through the analysis of data requested from State agencies on the number of such railroad grade crossings. Comments on the anticipated costs of complying with this proposed rule, especially any specific data available to States, local communities, or motor carriers, would be helpful. Such costs may include possible infrastructure changes; additional fuel cost attributable to re-routing, the cost of purchasing or leasing shorter CMVs, and the cost of hiring and employing additional drivers. In addition, the FHWA requests comments from motor carriers about whether the rule would make some of their deliveries impossible or cost prohibitive.

#### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this proposed rule upon small entities. Any motor carrier, regardless of its size, is subject to the same driving rules which protect the safety of the motoring public. Because some motor carriers, including small motor carriers, may have to develop alternative routing as a result of this proposed rule, it may have an economic impact on small business entities. The proposed rule may have less of an economic impact upon small motor carriers, as a group, than large motor carriers because small motor carriers, as a group, tend to operate with a lower proportion of long or articulated CMVs than large motor carriers. Small motor carriers, therefore, would be required less often to develop alternative routing. On the other hand, the FHWA is concerned that some small motor carriers may have limited resources with which to make modifications to their operations to comply with this proposed rule.

However, because of a lack of data the FHWA is presently unable to estimate

how many crossings exist where a CMV driver would be unable to drive completely through the railroad grade crossing because the positioning of the stop sign or other traffic control device causes the driver to stop on the tracks. If the FHWA is able to obtain better data, the FHWA will further evaluate the degree to which infrastructure changes might have to be made and/or whether small motor carriers might have to develop alternative routing for their CMVs and the extent of the resulting economic impact.

#### **Executive Order 12612 (Federalism Assessment)**

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule is not intended to preempt any State law or State regulation. If this rule is adopted as proposed, motor carriers would continue to be subject to State and local traffic laws. In addition, the rule would impose no additional cost or burden upon any State. The rule would not have a significant effect upon the ability of the States to discharge traditional State governmental functions.

#### **Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

#### **Paperwork Reduction Act**

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

#### **National Environmental Policy Act**

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this action would not have any effect on the quality of the environment. An environmental impact statement is, therefore, not required.

#### **Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### **List of Subjects in 49 CFR Part 392**

Highway safety, Motor carriers.

Issued on: July 20, 1998.

**Kenneth R. Wykle,**

*Federal Highway Administrator.*

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, chapter III, part 392 as set forth below:

#### **PART 392—[AMENDED]**

1. The authority citation for part 392 is revised to read as follows:

**Authority:** 49 U.S.C. 31136 and 31502; sec. 112, Pub. L. 103-311, 108 Stat. 1673, 1676; and 49 CFR 1.48.

2. Section 392.12 is added to read as follows:

#### **§ 392.12 Railroad grade crossing; sufficient space.**

A driver of a commercial motor vehicle shall not drive onto a railroad grade crossing without having sufficient space to drive completely through the crossing without stopping.

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